

India: The Emergence of Cooperative Federalism

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The Constitution of India envisaged a creative balance between the need for an effective Centre and empowered states. The federal system that emerged became the sound framework for the working of the Indian state. In spite of the difficulty of maintaining a balance of powers, the system has survived.

A country the size of a continent, with an area of 12,650 000 sq. miles and a population of over a billion, India is a diverse society with 18 national languages and some 2000 dialects, a dozen ethnic and seven religious groups fragmented into a large number of sects, castes and sub-castes, and some sixty socio-cultural sub-regions spread over seven natural geographic regions. Before independence in 1947, India had been under the jurisdiction of first the British East India Company and then the British Crown for the preceding two centuries.

From 1946 to 1950, the leaders of India's Freedom Movement and the founding fathers of the Constitution had the task of drafting the Constitution. The members of this Constituent Assembly shared two main goals. The first was to build a united polity out of a highly fragmented and segmented society, which they attempted through strengthening the "Union" or federal order, by shifting residuary powers to it. Their second aim was to develop a highly undeveloped country by reducing poverty and illiteracy and building a modern nation state. The result was to be the longest constitution in the world with 395 Articles, 12 schedules and 3 appendices.

The Constitution establishes a "Union of States," which now consists of 28 states, six "Union territories", and one National Capital territory. It also defines the powers of the executive, legislative, and judicial branches of government; provides a standard by which the validity of the laws enacted by the legislature is tested; and establishes the judiciary as the guardian of the Constitution. The Constitution is generally flexible but rigid in many of its "federal" matters that pertain to the states. Consequently, the Constitution, reflecting concerns about centrifugal forces that might fragment India, establishes a rather centralized polity in which the Union government is vested with sufficient powers to ensure not only its dominance, but also its ability to rule in a unitary fashion if necessary and politically feasible.

Equally important, the country's diversity and socio-economic conditions, coupled with the ideological influences of socialism, drove the Constitution toward a more unitary federalism in the name of justice, equality, and rights protection. **Only a strong Centre, thought many of the founders, could effectively drive economic development and ensure equity across territorial jurisdictions, religions, languages, classes, and castes.** Hence the trend generally was toward ever more centralization under the Congress Party from independence to the 1980s. During the 1980s, however, Union-state relations became more rancorous, the Congress party began to decline, and a coalition government, the National Front, assumed power in New Delhi as a result of the 1989 elections in part because centralized federalism driven by a monopoly party for some 40 years had fallen far short of achieving the objectives set forth in the Constitution. Since 1989, coalition governments at the Centre, proliferating regional and state parties across the country,

and liberalization of the economy have served to decentralize the federal political system in many respects.

However, despite decentralization in some areas, there is still widespread opinion that the mechanisms of inter-governmental relations in India are tilted in favour of the central government. The strong Centre that the founders envisaged has created its own set of problems.

Article 356, or “President’s Rule”, in which a state’s assembly can be dissolved or suspended at the behest of the central government for its “unconstitutional” behaviour, has become one of the most hotly debated topics of Indian Constitution. Article 356 was introduced for emergencies in which a state government fails to behave in accordance with the provisions of the Constitution. However, the sole judge of that behaviour has been the central government. Often considered to have been used indiscriminately in the past, steps are being taken now to safeguard against future abuses.

Another illustration of potential over-centralization is an imbalance between the powers of taxation assigned to the Union and the states in light of the social-economic responsibilities assigned to each. The Constitution regulates in elaborate detail the legislative and administrative relations between the Union and states, and the distribution of revenues between them. The Union has been invested with a larger field for the operation of its legislative and executive authority than is to be found in most other federal constitutions.

A similar imbalance of revenue and responsibilities exists between the state and municipal orders as does between the Union and the states. While, the Constitution confers constitutional status on the municipal order, their ‘autonomous’ functioning has yet to be established. Known as “Panchayats” in rural areas, the municipal bodies do not possess the financial backing or necessary expertise to maximize their authority. However, one positive outcome of the municipal order is that, due to the Constitution reserving a certain number of seats for women and specified castes and tribes, these traditionally disadvantaged groups have been able to gain experience. They are then enabled to work toward participation at the state or national orders.

The Indian Constitution would seem to create a cooperative Union of states rather than a dual polity. Planning for mobilisation of national resources and their most effective and balanced utilisation for the social and economic development of the country as a whole now appears to be an integral part of this concept. Through allocation of financial resources and centralized planning, the Union has extended its role into areas which used to lie exclusively within the states’ domain. On the other hand, redistribution of responsibilities through devolution of powers from the Union to the states and from the states to the Panchayats is facilitating the attainment of the objectives of the Constitution: unity, social justice and democracy. All this indicates steps in the direction of cooperative federalism.